

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHRISTOPHER A. POLLARD

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Appeal No. 1999-1543  
Application No. 08/456,762

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ON BRIEF

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Before BARRETT, LALL, and DIXON, Administrative Patent Judges.  
LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection<sup>1</sup> of claims 1, 2, 7 to 9, 13, 14, 19 to 21, 25 and 26. Claims 3 to 6, 10 to 12, 15 to 18 and 22 to 24 have been canceled.

The disclosed invention relates to a cartridge engagement system for use in an optical disk storage and retrieval system. The cartridge engagement system uses gripping means to retrieve a

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<sup>1</sup> The obvious double patenting rejection on these claims has been obviated by Appellant's offer to file a terminal disclaimer, see brief at page 2.

selected cartridge within the optical disk storage and retrieval system from a storage slot, transfer the cartridge to a disk reader, and to subsequently return the cartridge to its slot when instructed to do so. The gripping means normally grips the cartridge by engaging with the notches located on the side of the cartridge. Biasing springs are connected to the gripping arms so as to bias the gripping arms in one of two different biasing conditions. In the first biasing condition, the gripping arms are biased towards each other so that when advanced against a cartridge they will deflect into engagement with the notches. In the second biasing condition, the gripping arms are biased outwardly and are thus unable to engage with the cartridge.

Further understanding of the invention can be achieved by the following claim.

1. An apparatus for retrieving and maneuvering a cartridge, the apparatus comprising:

a carriage slidable along a longitudinal path;

a pair of gripping arms movably mounted to the carriage and extending from it, each gripping arm having engaging means for engaging the cartridge;

biasing means for subjecting the gripping arms to:

a first biasing condition in which the gripping arms are resiliently biased in a first direction for engaging the cartridge with the engaging means, and

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a second biasing condition in which the gripping arms are resiliently biased in a second direction for releasing the cartridge; and

setting means for selectively setting the biasing condition of the biasing means for gripping or releasing the cartridge.

The Examiner relies on the following references:

Wanger et al. (Wanger)	5,014,255	May 7, 1991
Hug et al. (Hug)	5,128,912	July 7, 1992
Belo Urban Des Tech. (Belo) <sup>2</sup> (Russian)	1,298,176	Mar. 23, 1987

Claims 1, 13, 25 and 26 stand rejected under 35 U.S.C. § 103 over Wanger in view of Belo, while claims 2, 7 to 9, 14 and 19 to 21 stand rejected over Wanger in view of Belo and Hug.

Rather than repeat the arguments of Appellant and the Examiner, we make reference to the brief and the answer for their respective details thereof.

#### OPINION

We have considered the rejections advanced by the Examiner and the supporting arguments. We have, likewise, reviewed the Appellant's arguments set forth in the brief.

We reverse.

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<sup>2</sup> A copy of the English translation is enclosed with this decision.

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In our analysis, we are guided by the general proposition that in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). We are further guided by the precedent of our reviewing court that the limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 113 USPQ 530 (CCPA 1957); In re Queener, 796 F.2d 461, 230 USPQ 438 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192(a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of that court to examine the claims

in greater detail than argued by an appellant, looking for nonobviousness distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967) ("This court has uniformly followed the sound rule that an issue raised below which is not argued in that court, even if it has been properly brought here by reason of appeal is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.").

At the outset, we note that Appellant elects, brief at page 4, that claims do not stand or fall together. However, in the body of the brief all claims are not individually discussed; see, for example, page 11 of the brief where claim 8 is said to be grouped with claim 1. Nevertheless, we discuss the claims as argued by Appellant in the body of the brief.

Rejection over Wanger and Belo

Claims 1, 13, 25 and 26 are rejected under this combination. The Examiner gives a lucid explanation of the rejection of these claims on pages 3 to 6 of the final rejection. The Examiner admits, id. at page 5, that Wanger does not show the gripping arms as "biased 'resiliently' in the second direction in the second biasing condition." However, the Examiner concludes, id. at page 6, that "it would have been obvious ... to modify the

springs in the apparatus of Wanger et al so as to resiliently bias the gripping arms in a second, opposite direction during release, such as shown in Belo Urban Des Tech." Appellant argues, brief at page 7, that "when the cylinder is in the upper position, as shown in Fig. 2 [of Belo], the springs 6 are not operative and provide no bias to the hinged seizing arms 13." Appellant further concludes, brief at page 8, that "[t]herefore, the Belo Urban grab has one, and only one, biasing condition."

After a careful review of the Belo reference, we find that it does not provide the second biasing position as asserted by the Examiner. Belo at page 3 to 4 states that "[a]t this time [while releasing] springs 11 slightly open by the amount of gaps  $\alpha$ , the force of springs 11 close on rods 6 between nuts 10 and limiting stops 16 and do not affect the arms and slide block 2, because the force of springs 11 ... does not affect the gripping arms 13 and slide block 2, ...."

The Examiner contends, answer at page 6, that "[s]uch a resilient means ensures that the gripping arms are positively moved to the desired locations when changing from the first bias condition to the second and vice versa. Spring like the one shown in Belo Urban Des Tech have [sic] long been used in robotic gripping assemblies to guarantee precise movement from

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one position to the other as well as to grip items with a predetermined amount of force, thus reducing the chance of mishandling." We note that this is a conclusory statement and the Examiner offers no evidence to support such an assertion. We do not find this contention being supported by the Belo reference. Therefore, we do not sustain the rejection of these claims over Wanger in view of Belo.

Rejection over Wanger in view of Belo and Hug

Claims 2, 7 to 9, 14, 19 to 21 are rejected under this combination on pages 6 to 8 of the final rejection. However, we note that Hug does not cure the deficiency noted above in the combination of Wanger and Belo. Therefore, we cannot sustain the obviousness rejection of the these claims over Wanger, Belo and Hug.

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In conclusion, we reverse the decision of the Examiner  
rejecting claims 1 to 2, 7 to 9, 13, 14, 19 to 21, 25 and 26  
under 35 U.S.C. § 103.

REVERSED

LEE E. BARRETT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
PARSHOTAM S. LALL	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

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